

DEFENDANT ASSOCIATION'S REPLY TO PLAINTIFF'S OPPOSITION TO ASSOCIATION'S MOTION TO DISMISS- PAGE 1 OF 5
Adv. No.: 13-02132-B

1 Defendant AUBURN LAKE TRAILS PROPERTY OWNERS ASSOCIATION ("Association" or
2 "Defendant") hereby replies to Plaintiff Edstrom's Opposition to Association's Motion to Dismiss For
3 Failure to State a Claim, or In the Alternative For More Definite Statement as follows:

4 1. Dismissal of Plaintiff's complaint is appropriate because Plaintiff's opposition is just as
5 confusing, rambling, and unintelligible as the complaint; and

6 2. Plaintiff is incapable of pleading new facts that would overcome the deficiencies of the
7 complaint and thus, leave to amend should be denied.

8 POINTS AND AUTHORITIES

9 **1. Dismissal of Plaintiff's complaint is appropriate because Plaintiff's opposition is just as** 10 **confusing, rambling, and unintelligible as the complaint.**

11 Dismissal is appropriate when the operative pleading is patently verbose, confusing, and
12 rambling. *Desardounin v. UPS, Inc.* (D. Conn. 2003) 285 F. Supp. 2d 153, 157. Plaintiff's opposition
13 to Association's motion to dismiss consists of 21 pages of confusing, rambling, and unintelligible
14 arguments. Instead of responding to the arguments raised in Association's motion to dismiss, Plaintiff
15 cites numerous irrelevant and inapplicable legal authorities. None of the cases cited in Plaintiff's
16 opposition addresses the issue of pleading deficiency.

17 In order to survive a motion to dismiss, the facts alleged must state a facially plausible claim for
18 relief. *Shroyer v. New Cingular Wireless Services, Inc.* (9th Cir. 2010) 622 F3d 1035, 1041. A plaintiff
19 cannot "plead the bare elements of his cause of action, affix the label 'general allegations,' and expect his
20 complaint to survive a motion to dismiss." *Ashcroft v. Iqbal* (2009) 129 S. Ct. 1937, 1954. Plaintiff's
21 rambling, confusing, and conclusory arguments fail to show that the complaint alleged facts sufficient to
22 state a cause of action against the Association:

- 23 • Plaintiff's first cause of action for violation of the automatic stay fails to state any cognizable
24 claim against the Association. Plaintiff did not allege any post-petition act in violation of the
25 automatic stay. In response to Plaintiff's bankruptcy notice, Association informed Plaintiff that
26 all proceedings against Plaintiff and his property would be suspended. No lien has been filed
27 against Plaintiff or against property of the debtor or the estate.
- 28 • Plaintiff's second cause of action fails to state any cognizable claim against the Association

1 because Plaintiff's complaint does not qualify as an adversary proceeding. Plaintiff fails to apply
2 Rule 7001 (1) – (10) enumerated list of proceedings qualifying as adversary proceedings under
3 bankruptcy law to the case at hand.

- 4 • Plaintiff's third cause of action for breach of contract fails to state any cognizable claim against
5 the Association because the allegations are wholly confusing and unintelligible.
- 6 • Plaintiff's fourth cause of action for specific performance fails to state any cognizable claim
7 against the Association because a claim for specific performance is not a separate cause of action.
8 Plaintiff's request to "amend the Adversary Proceeding to move specific performance to the
9 remedy portion of the Breach of Contract claim" shows that Plaintiff is wasting judicial resource.
- 10 • Plaintiff's fifth cause of action for violation of Fair Debt Collection Practices Act fails to state
11 any cognizable claim against the Association because Plaintiff fails to allege any provisions of the
12 FDCPA violated by the Association.
- 13 • Plaintiff's sixth cause of action for violation of the Rosenthal Act fails to state any cognizable
14 claim against the Association because Plaintiff fails to state any acts or omissions of the
15 Association allegedly in violation of the Act.
- 16 • Plaintiff's seventh cause of action for violation of California Business and Professions Code
17 Section 17200 fails to state any cognizable claim against the Association because Plaintiff fails to
18 state any act or business practice of the Association in violation of the Code. Plaintiff's
19 opposition recites numerous irrelevant and inapplicable laws.
- 20 • Plaintiff's eighth cause of action for breach of fiduciary duty fails to state any cognizable claim
21 against the Association because Plaintiff's allegations are conclusory.
- 22 • Plaintiff's ninth cause of action for fraudulent misrepresentation fails to state any cognizable
23 claim against the Association because Plaintiff's rambling allegations do not state with
24 particularity the circumstances constituting fraud or mistake.
- 25 • Plaintiff's tenth cause of action for negligence fails to state any cognizable claim against the
26 Association because Plaintiff's allegations are conclusory and fails to show any breach of duty
27 and resulting damage from the alleged breach.
- 28 • Plaintiff's eleventh cause of action for slander of title fails to state any cognizable claim against
the Association because Plaintiff's so-called "constructive" slander of title is not a cognizable

1 legal theory.

- 2 • Plaintiff's twelfth cause of action for intentional infliction of emotional distress, thirteenth cause
3 of action for negligent infliction of emotional distress, fourteenth cause of action for harassment,
4 fifteenth cause of action for violation of implied covenant of good faith and fair dealing, sixteenth
5 cause of action for respondeat superior, seventeenth cause of action for injunctive relief,
6 eighteenth cause of action for conspiracy, nineteenth cause of action for invasion of privacy,
7 twentieth cause of action for quiet title, and finally, twenty-first cause of action for actual or
8 constructive easement all fail to state any cognizable claim against Association because the
9 allegations are conclusory, confusing, and unintelligible.

10 In conclusion, dismissal of Plaintiff's complaint with prejudice is appropriate because Plaintiff's
11 frivolous pleading and motion practice are wasting the court's time and unfairly forcing Association to
12 incur unnecessary legal expenses. Judicial resources will continue to be wasted if leave to amend is
13 allowed.

14 **2. Plaintiff is incapable of pleading new facts that would overcome the deficiencies of the**
15 **complaint and thus, leave to amend should be denied.**

16 Leave to amend should be denied where it is absolutely clear that *pro se* plaintiff is incapable of
17 pleading new facts that would overcome the deficiencies of the complaint. *Lucas v. Dept. of Corrections*
18 (9th Cir. 1995) 66 F.3d 245, 248. It is absolutely clear that Plaintiff is incapable of pleading new facts
19 that would overcome the deficiencies of the complaint.

20 For example, in his opposition, Plaintiff seems to argue that the complaint qualifies as an
21 adversary proceeding under Rule 7001(1) because Plaintiff alleges violation of the automatic stay and
22 various causes of action under California state law and that "Plaintiff seeks monetary damages which
23 cannot be obtained by motion or property in a plan of reorganization." (Plaintiff's Opposition at page 9,
24 lines 20-21.) Plaintiff fails to apply Rule 7001 (1) – (10) enumerated list of proceedings qualifying as
25 adversary proceedings under bankruptcy law to the case at hand. Plaintiff's opposition is a regurgitation
26 of the same confusing arguments and allegations contained in the complaint. Plaintiff is incapable of
27 identifying relevant issues and incapable of applying relevant laws. Plaintiff makes nonsensical circular
28 arguments in the hope that the court will find one of those arguments to be plausible and grant a

1 “sympathy” leave to amend. The bankruptcy court’s adversary proceeding is not the proper venue for
2 venting personal ill feelings.

3 **CONCLUSION**

4 In conclusion, as evidenced by Plaintiff’s long and unintelligible complaint and Plaintiff’s
5 opposition consisting of repetitious conclusory arguments and inapplicable laws, and regurgitation of the
6 same allegations in the complaint, it is absolutely clear that Plaintiff is incapable of pleading new facts
7 that would overcome the deficiencies of the complaint. Thus, leave to amend should be denied.

8 Respectfully Submitted.

9 Dated: July 16, 2013

ANGIUS & TERRY, LLP

11 By: /s/ Sam Y. Chon
12 SAM Y. CHON

13 Attorneys for Defendant Auburn Lake Trails
14 Property Owners Association
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